

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11 CR 96**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>GERALD CLARENCE RICH, SR.</b>	)	
	)	
_____	)	

**THIS CAUSE** coming on to be heard and being heard before the undersigned at the close of a Rule 11 proceeding that was held before this court on February 22, 2012. It appeared to the court at the call of this matter on for hearing the defendant was present with his attorney, Fredilyn Sison and the government was present and represented through Assistant United States Attorney David Thorneloe. From the arguments of counsel for the defendant and the arguments of the Assistant United States Attorney and the records in this cause, the court makes the following findings:

**Findings.** On December 6, 2011 a bill of indictment was issued charging defendant with transporting child pornography, in violation of 18 U.S.C. § 2252(a)(1) and with possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). On February 22, 2012, the undersigned held an inquiry, pursuant to Rule 11 of the Federal Rules of Criminal Procedure and accepted a plea of guilty of the defendant to both charges. At the end of the Rule 11 proceeding, this court presented the issue of

whether or not defendant should now be detained, pursuant to 18 U.S.C. § 3143(a)(2).

**Discussion.** 18 U.S.C. § 3143(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless ----

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records in this cause, it appears defendant has entered a plea of guilty on February 22, 2012 to transporting child pornography, in violation of 18 U.S.C. § 2252(a)(1) and possession of child pornography, in violation of 18 U.S.C. § 2252(A)(4)(B). Those crimes are crimes that are referenced under 18 U.S.C. § 3142(f)(1)(A).

The undersigned made an inquiry of Assistant United States Attorney David Thorneloe as to whether or not there is going to be a recommendation that no sentence of imprisonment be imposed upon defendant. Mr. Thorneloe advised the court that such a recommendation had not been and would not be made in this matter. As a result of the plea of guilty, the undersigned cannot find there is a substantial likelihood

that a motion for acquittal or new trial will be granted. It would thus appear and the court is of the opinion that the court is required to apply the factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of defendant. Defendant's counsel requested that the court enter the order without prejudice to the defendant subsequently filing a motion asking the court to consider the release of defendant, pursuant to 18 U.S.C. § 3145(c) to which the government advised there was no objection.

### **ORDER**

**IT IS, THEREFORE, ORDERED**, that the terms and conditions of pretrial release in this matter are hereby **REVOKED** and it is ordered that defendant be detained pending further proceedings in this matter. This order is entered without prejudice to the defendant filing a motion, pursuant to 18 U.S.C. § 3145(c).

Signed: February 25, 2012

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Dennis L. Howell  
United States Magistrate Judge

